IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7869 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JIGAR BABABHAI RAVAT

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR UDAY BHATT Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 17/10/2000

ORAL JUDGEMENT

1. The petitioner-detenu has, by filing this writ petition under Article 226 of the Constitution of India, challenged the legality and validity of the order of detention dated 16.6.2000, Annexure-A, in respect of petitioner passed by the respondent no. 2 in exercise of

his powers conferred upon him under sec. 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short 'the Act').

2. As per the papers of grounds of detention, the detenu is a bootlegger within the meaning of sec. 2(b) of the Act and that his activities are prejudicial to the maintenance of public order. Before passing an order of detention, for arriving at a subjective satisfaction, the detaining authority has placed reliance on four prohibition cases referred to in the grounds of detention, Annexure-B and the statements of two anonymous witnesses whose identity has not been disclosed by claiming privilege under sec. 9(2) of the Act. As per the papers of grounds of detention, such statements were verified by the detaining authority on 15.6.2000 and on the very next day i.e. on 16.6.2000, he pased an order of detention which is challenged in this writ petition.

3. Thogh rule has been served upon each of the respondents, they have not filed affidavits-in-reply, in reply to the main petition controverting the grounds of attack mentioned in the memo of petition.

4. Mr MR Prajpati learned advocate for the petitioner has argued that the statements of two anonymous witnesses which have been relied on by the detaining authority, were recorded on 14.6.2000 and the same were verified by the detaining authority on 15.6.2000 and the order of detention came to be passed on the very next day. He has argued that the detaining authority has not claimed the privilege in accordance with law. He has placed reliance on the case of Kalidas Chandubhai Kahar vs. State of Gujarat and Ors., reported in 1993 (2) GLR 1659, wherein it has been held that the detaining authority is expected to do some exercise before actually exercising the privilege under sec. 9(2) of the Act. This present case is squarely falls falls within the four corners of cited case.

5. In view of what is stated hereinabove, this petition is allowed. The impugned order of detention dated 16.6.2000 passed by respondent no. 2 in respect of detenu is set aside. The detenu is ordered to be released forthwith, if he is not required to be detained in any custody for any criminal case or proceeding. Rule is made absolute. Direct service is permitted.

(H.H. MEHTA, J.)

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